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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,715	12/23/2005	Bengt Large	RR-602 PCT/US	8605
20427	7590	05/22/2008		
RODMAN RODMAN 10 STEWART PLACE SUITE 2CE WHITE PLAINS, NY 10603			EXAMINER RODRIGUEZ, JOSEPH C	
			ART UNIT 3653	PAPER NUMBER
			MAIL DATE 05/22/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/562,715	Applicant(s) LARGE ET AL.	
	Examiner JOSEPH C. RODRIGUEZ	Art Unit 3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 16-33 is/are pending in the application.
 4a) Of the above claim(s) 5-14, 16-26 and 28-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 27 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/23/05</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

Claims 5-14, 16-26 and 28-33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected claim grouping, there being no allowable generic or linking claim. To clarify the claim groupings, claim 27 has been added to the elected claim grouping; claims 28-31 are in group 4 and claim 32 is in group 7. Election was made **without** traverse in the reply filed on 2/18/08.

With respect to Applicant's contention that certain claims should be added to the elected claim grouping since no burden exists. Examiner notes that MPEP 803 is not applicable for lack of unity of invention restrictions. See MPEP 823, 1850, 1875. Further, even if this requirement was applicable, a burden can be seen to exist as a search of the additional claims would require a separate, additional search that would constitute a serious burden on Examiner.

Specification

Claim Objections

The claims are objected to because of the following informalities:

Independent claims should begin with "**A**" or "**An**" and the claims depending therefrom should begin with "**The**".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 27 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 27, the phrase "for example" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson (US 4,498,576).

Anderson (Fig. 1-7) teaches a device for directionally guiding articles of different shapes that are being conveyed on a conveyor (22, 28) off the conveyor with the aid of a movable gate (disc 40) that is controllable to turn across the conveyor to an angle relative to direction of movement of the conveyor (Fig. 1, 4, 7; col. 3-5 teaching rotating of disc with drive 54 to eject objects from direct conveyor path and use of multiple wheel

angles and heights to accommodate different product sizes, wherein movement of members 72 and 84 provide horizontal, non-horizontal and non-vertical axis of rotation). Further, Applicant is respectfully reminded that claim language consisting of functional language and/or intended use phrasing is given little, if any, patentable weight as the apparatus must merely be capable of functioning, or being used, as claimed. See MPEP 2112.02, 2114. Here, the device cited above is certainly capable of sorting articles in the form of empties, for example, bottles or cans. Further, the disc is regarded as having a frictional surface in view of the disc surface taught by Applicant.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson (US 4,541,532) in view of Teske et al. ("Teske")(US 4,069,928)

Wilson (Fig. 1-3) teaches a device for directionally guiding articles of different shapes that are being conveyed on a conveyor (15) off the conveyor with the aid of a movable gate (multiple discs 11) that is controllable to turn across the conveyor to an angle relative to direction of movement of the conveyor (Abstract teaching that discs can be located at varying locations, heights and angles). Further, Applicant is respectfully reminded that claim language consisting of functional language and/or

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intended use phrasing is given little, if any, patentable weight as the apparatus must merely be capable of functioning, or being used, as claimed. See MPEP 2112.02, 2114. Here, the device cited above is certainly capable of causing the article to be forcibly driven through aid of disc rotation along the gate, in a direction corresponding to the said angle, off the conveyor and to an exit and having a central position in which the two discs are parallel to the longitudinal direction of the conveyor to allow articles to pass unobstructed therebetween. Further, the disc is regarded as having a frictional surface in view of the disc surface taught by Applicant.

Wilson as set forth above thus teaches all that is claimed except for expressly teaching discs being motor-driven. This feature, however, is well-known in the sorting arts. For instance, Teske teaches a motor-driven disc in a sorter that provides the sorter greater control over the separation process (Abstract; col. 4, 5). It would thus be obvious to one with ordinary skill in the art to modify the base reference with these prior art teachings to arrive at the claimed invention. The rationale for this obviousness determination can be found in the prior art itself as cited above. Further, the prior art discussed and cited demonstrates the level of sophistication of one with ordinary skill in the art and that these modifications would be well within this skill level. Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the invention of Wilson for the reasons set forth above.

Allowable Subject Matter

Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any references not explicitly discussed above but made of record are considered relevant to the prosecution of the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Joseph C Rodriguez** whose telephone number is **571-272-6942** (M-F, 9 am – 6 pm, EST). The Supervisory Examiner is Patrick Mackey, **571-272-6916**. The **Official** fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

The examiner's **UNOFFICIAL Personal fax number** is **571-273-6942**.

Further, information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system.

Status information for published applications may be obtained from either Private PMR or Public PAIR. Status information for unpublished applications is available through Private PMR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>

Should you have questions on access to the Private PMR system, contact the Electronic Business Center (EBC) at **866-217-9197** (Toll Free).

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/Joseph C Rodriguez/
Primary Examiner, Art Unit 3653
Jcr

May 22, 2008